

The parties stipulated that on February 28, 2005, claimant met with personal injury by accident arising out of and in the course of his employment with respondent. The principal issue presented to the Judge was whether claimant should receive permanent disability benefits for a lower extremity injury under the schedules of K.S.A. 44-510d or whether claimant's benefits should be determined under the provisions of K.S.A. 44-510e.

In the November 29, 2006, Award, Judge Fuller awarded claimant permanent disability benefits for a 10 percent impairment to his left lower leg under K.S.A. 44-510d.

Claimant contends Judge Fuller erred. Claimant argues Dr. Pedro A. Murati provides the most persuasive medical opinion. Therefore, claimant requests the Board to find that claimant has complex regional pain disorder (CRPD), which should be treated as a whole person injury rather than an injury to his left leg only. Accordingly, claimant requests permanent partial disability benefits for an eight percent whole person functional impairment under K.S.A. 44-510e. In the alternative, claimant requests the Board to grant him benefits under K.S.A. 44-510e for a six percent whole person functional impairment, which claimant argues is an average between Dr. Murati's eight percent whole person functional impairment rating and Dr. Terrence Pratt's four percent whole person rating.

Conversely, respondent and its insurance carrier request the Board to affirm the Award. They argue Dr. Murati's opinions are the least persuasive of the three medical opinions presented. They also argue it is clear claimant's injury should be compensated as a scheduled injury under K.S.A. 44-510d as both Dr. Pratt and Dr. Murati note claimant's injury is to his left foot.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and functional impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board concludes the November 29, 2006, Award should be affirmed.

On February 28, 2005, claimant hurt his left foot and ankle while jumping out of the path of a cow. The parties stipulated claimant's accident arose out of and in the course of his employment with respondent.

Claimant was initially given treatment at respondent's meat processing plant. But in late April 2005, respondent referred claimant to Dr. Guillermo Garcia for treatment. The doctor initially diagnosed a forefoot sprain and possible tarsal cyst. But after trying a cam walker and injections, the doctor felt claimant might have a possible neuroma in his left foot. Consequently, Dr. Garcia proposed surgery, which entailed risks and complications that included infection, phlebitis, permanent neurovascular damage, and the lack of any symptom relief. Claimant initially elected surgery but upon further reflection changed his mind.

Dr. Garcia last saw claimant in late August 2005 for a final evaluation. The doctor's diagnosis remained to be a neuroma in the left foot, which the doctor rated as comprising a five percent impairment to the left lower extremity or two percent to the whole person. The record does not disclose whether that impairment was determined by using the fourth edition of the *AMA Guides*.¹ Although the doctor had restricted claimant to sedentary activities during treatment, the doctor released claimant to work without restrictions.

Claimant, at his attorney's request, was evaluated in September 2005 by Dr. Pedro A. Murati. At that evaluation, claimant's chief complaint was left foot pain that radiated up the left lower extremity. After reviewing claimant's medical records and performing an examination, Dr. Murati diagnosed complex regional pain disorder (CRPD) Type 1 of the left lower extremity and left peroneal neuroma.

Using the *AMA Guides* (4th ed.), Dr. Murati concluded claimant sustained a 20 percent impairment to his left lower extremity (or eight percent to the whole person) for the CRPD. Moreover, the doctor indicated CRPD should be considered an impairment to the whole person rather than an impairment only to the left lower extremity. Dr. Murati recommended numerous work restrictions and further noted that claimant needed a sit-down job.

The last medical opinion in the record regarding claimant's functional impairment is from Dr. Terrence Pratt, who evaluated claimant at Judge Fuller's request. Dr. Pratt examined claimant in January 2006 and formed an impression that claimant had chronic left foot discomfort with a reported neuroma of the sural nerve and findings consistent with mild complex regional pain syndrome with an exam limited by inappropriate responses. Using the same table from the *AMA Guides* (4th ed.) that Dr. Murati had reportedly used, Dr. Pratt determined claimant had a 10 percent impairment to his left lower extremity. By way of work restrictions, the doctor advised against prolonged walking and prolonged standing and against activities on non-level surfaces.

At his October 2006 regular hearing, claimant alleged he experienced symptoms from his left foot all the way up into his chest. He also testified the entire left side of his body hurt. Moreover, at the regular hearing claimant was wearing the cam walking boot that Dr. Garcia had initially provided.

Claimant has sustained a significant injury to his left lower leg that now limits his ability to return to manual labor jobs. The Board finds claimant's injury, however, is presently limited to the left lower leg despite the fact that he probably has some form of

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

CRPD. The Kansas Supreme Court has ruled that it is the situs of the disability that governs the determination of permanent disability benefits rather than the situs of the original trauma.²

It is the situs of the resulting disability, not the situs of the trauma, which determines the workers' compensation benefits available in this state.³

In this instance, the Board finds the medical evidence is overwhelming that the situs of claimant's present impairment is his left lower leg. In short, the medical evidence fails to establish that claimant has disability in any part of his body other than his left lower leg. Consequently, claimant's permanent disability benefits are to be computed under the schedules of K.S.A. 44-510d. Should claimant's condition change, however, he may seek review and modification of his Award under K.S.A. 44-528.

Finally, the Board affirms the Judge's finding that claimant has sustained a 10 percent functional impairment to his left lower leg due to his February 2005 accident. Dr. Pratt evaluated claimant at the Judge's request and, theoretically, his opinion is unbiased. On the other hand, Dr. Murati was hired by claimant's attorney to provide an opinion in this claim and, therefore, his opinions must be considered in that context. Finally, Dr. Garcia's functional impairment opinion is not given any weight as there is no indication the rating was formulated using the *AMA Guides* (4th ed.), which the Workers Compensation Act requires.⁴

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the November 29, 2006, Award entered by Judge Fuller.

² See *Bryant v. Excel Corp.*, 239 Kan. 688, 722 P.2d 579 (1986); *Fogle v. Sedgwick County*, 235 Kan. 386, 680 P.2d 287 (1984).

³ *Bryant*, 239 Kan. 688, Syl.

⁴ See K.S.A. 44-510e.

⁵ K.S.A. 2006 Supp. 44-555c(k).

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The record does not contain a written fee agreement between claimant and his attorney. K.S.A. 44-536(b) requires the written contract between the employee and the attorney be filed with the Director for review and approval. Should claimant's counsel desire a fee in this matter, counsel must submit the written agreement to the Judge for approval.

IT IS SO ORDERED.

Dated this ____ day of March, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
 Chris A. Clements, Former Attorney for Claimant
 D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier
 Pamela J. Fuller, Administrative Law Judge